

BERNARD A. SCHMID

IBLA 80-294

Decided May 29, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claim abandoned for failure to timely file copies of notice or certificate of location and evidence of assessment work performed or notice of intention to hold said mining claim. OR 3833.

Affirmed.

1. Federal Land Policy and Management Act of 1976:  
Recordation of Affidavit of Assessment Work or Notice  
of Intention to Hold Mining Claim -- Federal Land  
Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims:  
Recordation

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of the recorded affidavit of assessment work or notice of intention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

2. Federal Land Policy and Management Act of 1976:  
Recordation of Affidavit of Assessment Work or Notice  
of Intention to Hold Mining Claim -- Federal Land  
Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims:  
Recordation

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims

must result in a conclusive finding that the mining claim has been abandoned and is void.

3. Federal Land Policy and Management Act of 1976:  
Recordation of Mining Claims and Abandonment -- Mining  
Claims: Recordation

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

APPEARANCES: Bernard A. Schmid, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bernard A. Schmid, hereinafter appellant, appeals from the December 12, 1979, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Douglas and Big Jake lode mining claims abandoned for failure to timely file either notices of location or evidence of assessment work performed or a notice of intention to hold the mining claims, in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) section 314(a)(b), 43 U.S.C. § 1744(a)(b) (1976); 43 CFR 3833.1-2(a), 3833.2-1.

In a letter received by the Oregon State Office, BLM, on October 19, 1979, appellant explained that he was in the process of changing residence and was therefore unable to submit the documents which were required to be filed by October 22, 1979. This letter was accompanied by a single remittance of \$5.

Appellant, in his statement of reasons on appeal, contends that his letter received by the Oregon State Office, BLM, on October 19, 1979, (1) gave notice that he intended to hold the claims; (2) contained a sufficient description of the claims; and (3) was accompanied by a check for \$5 which indicated that he would be willing to pay any and all fees necessary to hold the mining claims. Appellant did not submit the required documentation and full \$10 service fee for the recordation of his claims until January 10, 1980.

[1] The owner of an unpatented mining claim located prior to October 21, 1976, has until October 22, 1979, to record the location, and file copies of the accorded affidavit of assessment work or notice of intention to hold. Federal Land Policy and Management Act of 1976 (FLPMA) section 314(a)(b), 43 U.S.C. § 1744(a)(b) (1976); 43 CFR

3833.1-2(a), 3833.2-1. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office. 43 CFR 3833.1-2(a).

[2] Failure to comply with the regulations governing recordation of information relating to mining claims must result in a conclusive finding that the claim has been abandoned and is void. FLPMA, section 314(c), 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); H. L. Smith, 46 IBLA 62 (1980); Walter T. Paul, 43 IBLA 119 (1979); Joe B. Cashman, 43 IBLA 239 (1979).

[3] With regard to appellant's failure to include the required service fee, the applicable regulation, 43 CFR 3833.1-2(d), specifically provides: "Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979); Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

